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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1946

No. 157

WILLIAM ARCHIBALD HEDRICK,
Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT.

JEREMIAH F. CROSS,
Counsel for Petitioner.

INDEX

Subject Index

	Page
Petition for writ of certiorari	1
Opinions below	1
Jurisdiction	2
Question presented	2
Statutes and regulations involved	2
Statement	3
Specification of errors to be urged	4
Reasons for granting the writ	4

CITATIONS

Cases

Commissioner v. *Giannini*, 129 Fed. (2d) 638	4

Statutes

Internal Revenue Code Section 22 (a), (26 U. S. C. 1940 Ed., Sec. 22)	2

Regulations

Treasury Regulations 103, Sec. 19.22(a)—2	2

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PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT.

The petition of William Archibald Hedrick prays that a writ of certiorari issue to review the judgment of the Circuit Court of Appeals for the Second Circuit entered in the above entitled action on March 15, 1946, affirming a decision of the Tax Court of the United States.

Opinions Below

The memorandum opinion of the Tax Court of the United States (R. 10-13), has not been reported. The opinion of the Circuit Court of Appeals (R. 23-25) is not yet reported

Jurisdiction

The judgment of the Circuit Court of Appeals was entered March 15, 1946. The jurisdiction of this Court is invoked under Section 240 (a) of the Judicial Code as amended by the Act of February 13, 1925.

Question Presented

Whether compensation due for services already performed, and which has been refused or waived, is taxable income.

Statutes and Regulations Involved

Internal Revenue Code:

Sec. 22. GROSS INCOME.

(a) General Definition.—"Gross income" includes gains, profits, and income derived from salaries, wages, or compensation for personal service, of whatever kind and in whatever form paid, or from professions, vocations, trades, businesses, commerce, or sales, or dealings in property, whether real or personal, growing out of the ownership or use of or interest in such property; also from interest, rent, dividends, securities, or the transaction of any business carried on for gain or profit, or gains or profits and income derived from any source whatever. • • •

(26 U. S. C. 1940 ed., Sec. 22.)

Treasury Regulations 103, promulgated under the Internal Revenue Code:

Sec. 19.22 (a)—2. Compensation for personal services.—Commissions paid salesmen, compensation for services on the basis of a percentage of profits, commissions on insurance premiums, tips, pay of persons in the military or naval forces of the United States, retired pay of Federal and

other officers, and pensions or retiring allowances paid by private persons or by the United States are income to the recipients; * * *

Statement

The facts, found in the memorandum opinion of the Tax Court of the United States, entered May 21, 1945, are as follows:

At the beginning of the tax year 1941, the petitioner was employed by the New York Telephone Company at a salary of $45.00 per week. On June 10th of that year the petitioner was notified by his employer, that his employment would terminate as of that date and that he was eligible for retirement pay under an employees' pension plan established voluntarily by the Company, under which plan a retired employee was "given" three months "pre-retirement leave" with pay, and was thereafter eligible to receive certain other retirement pay (R. 11).

The petitioner was furnished a form on which to make application for such retirement (R. 10).

He refused to sign the application and told a Company official that he would not accept such benefits (R. 10).

Despite the refusal to make application for the proffered gift of pre-retirement pay, or pension, and the petitioner's renunciation of all tendered benefits, the Company, nevertheless, sent to the petitioner checks for approximately $603.00 or an amount equal to three months full pay. The checks were never cashed (R. 11).

The funds are held by a trust company as agent for the Company.

The petitioner did not deny that checks in the approximate amount of $603.00 had been received, but the petitioner never accepted the checks, has at all times disclaimed any intention of doing so, and would have "nothing to do with them" (R. 11).

The Tax Court of the United States held that the Commissioner did not err in adding the amount of $603.00 to the taxpayer's compensation for 1941. Therefore, there was a deficiency in the sum of $202.01 for 1941. The Circuit Court of Appeals for the Second Circuit in its opinion, affirmed the decision of the Tax Court.

Specification of Errors to Be Urged

The Circuit Court of Appeals erred—

1. In holding that the taxpayer could not refuse to accept offered compensation for services already performed.

2. In holding that the taxpayer could not waive or refuse compensation for services, unless the taxpayer refused such compensation before he performed the services and the company acquiesced therein.

3. In holding that the taxpayer could not refuse to accept the checks because they were given in satisfaction of a matured obligation.

4. In affirming the order of the Tax Court of the United States.

Reasons for Granting the Writ

The Court below admitted a conflict with the decision of the Circuit Court of Appeals, Ninth Circuit in the case of *Commissioner* v. *Giannini,* 129 Fed. (2d) 638.

Chase, J., writing for the Court below said:

> "Perhaps Com'r v. Giannini, Cir. 9, 129 F. (2d) 638 may be distinguished on the facts. If, as we understand them, the amount sought to be taxed as income was offered compensation which the taxpayer refused *before* he performed the services for which he might have been so paid and the bank acquiesced in the taxpayer's insistence that he should serve for the remain-

> der of the year without additional compensation, we agree with it. In so far as it cannot be *so* distinguished, we are not persuaded that it should be followed" (R. 24-25) (Italics supplied).

The facts in both cases are similar but the issue upon which both decisions turned, is precisely the same.

In the *Giannini* case the taxpayer had a contractual right to receive five per cent of the net profits earned by the bank, his employer, during the calendar year. The taxpayer refused to accept payment of compensation for the services which he had already performed up to November of that year, and he did also refuse to accept payment for services to be performed thereafter during the balance of the calendar year.

In the case at bar the Court held that "pre-retirement pay" was a concomitant of the job the taxpayer held, and therefore was earned compensation.

In the *Giannini* case the taxpayer had a right to draw the earned compensation, but refused to do so.

In the instant case the Court below held that the taxpayer was entitled to draw "pre-retirement pay" and although he renounced this right, and refused to accept or have anything to do with checks sent to him by his employer thereafter, he could not avoid the tax consequence, because the obligation had matured for services already performed.

In the *Giannini* case it was held that earned compensation could be refused. In this case, the Court below held that it could not. The conflict should be resolved by a determination of this Court.

The question is one of importance in administering the tax laws, and has not heretofore been presented or decided.

This adventure of the Commissioner of Internal Revenue

in the collection of income taxes, by use of the invented "constructive receipt" doctrine, should be considered by this Court.

WILLIAM ARCHIBALD HEDRICK,
Petitioner.

JEREMIAH F. CROSS,
Counsel for Petitioner.

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